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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

May 10, 1979

The Honorable Jerome A. Emerson  
Maine State Senate  
State House  
Augusta, Maine 04333

Dear Senator Emerson:

This is in response to your letter dated April 30, 1979 requesting an opinion on several issues relating to the method of separating the Ogunquit Village Corporation from the Town of Wells. You have referred in your letter to four questions which I shall answer in the order you have presented them.

As I understand your first question you ask whether the municipality of Wells can abolish by charter revision or amendment the Ogunquit Village Corporation pursuant to the Home Rule authorization, M.R.S.A. Const. Art. VIII pt. 2, Section 1 and Title 30 M.R.S.A. Section 1911 et seq.

By passing an Act to Incorporate the Ogunquit Village Corporation, Chapter 203 of the Private and Special Laws, 1913, the Legislature created a corporate entity separate from the Town of Wells. The Ogunquit Village Corporation charter describes the entity as "a body politic and corporate," provides for the election of overseers to serve as municipal officers of the corporation and states the purposes for which the entity was created including fire and police protection; maintenance and construction of streets, sewers, sanitary works, and wharves; dedication and maintenance of public lands; and establishment of public water and lighting systems. The charter also describes the boundaries of Ogunquit Village Corporation.

The Municipal Home Rule provision of the Constitution of

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Maine, M.R.S.A. Const. Art. VIII, pt. 2, § 1, states in part:

The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by constitution or general law, which are local and municipal in character...

This constitutional provision permits a municipality to amend its charter on matters "which are local and municipal in character". Generally, however, a change in municipal boundaries is viewed as a political matter under legislative control. "As the exercise of the power [to change municipal boundaries] relates to matters extramural to the municipal corporation, which are of concern to the entire State, it is not a proper function of local self-government, except insofar as delegated to the local corporation by constitutional or statutory provisions." McQuillin Municipal Corporation 3d Ed., Rev. Vol. 2, chap 7, § 7.10, p. 310. We find no constitutional or statutory authorization permitting a municipality in Maine to alter boundaries. In fact as we noted in a prior opinion, a copy of which is attached for your information, the Legislature alone has the authority to expand or contract municipal boundaries. Municipal boundaries cannot be changed by corporate acts of the inhabitants of a town. We conclude that a municipality cannot abolish a separate political subdivision for the same reason it cannot alter boundaries. Consequently, it is our conclusion that the Town of Wells does not have authority to abolish Ogunquit Village Corporation.

Your second question refers to the procedure by which the Ogunquit Village Corporation may be separated from the Town of Wells. As I interpret the question, you ask whether the Home Rule Amendment to the Constitution of Maine and the implementing statutes preclude the Maine Legislature from separating the two municipalities by enacting LD 959 - An Act to Separate Ogunquit Village Corporation from the Town of Wells.

Although the Home Rule provisions of the Constitution bestow upon municipalities full power of local self-government

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on matters of municipal concern, the provisions of the Maine Constitution relating to the Legislature's authority to create municipal corporations and to change boundaries remains unchanged. M.R.S.A. Const. Art. IV, pt. 3, § 14. This authority includes, but is not limited to, the right to create and incorporate political subdivisions of the State; to abolish or dissolve a corporation at any time, Kelley v. Brunswick School Dist., Me. 187 A 703 (1936); to alter municipal boundaries, Ham v. Sawyer, 38 Me. 37 (1854); and to subdivide municipalities, North Yarmouth v. Skillings, 45 Me. 141 (1958).

Although the Home Rule power was granted to municipalities, the Legislature's control to create corporations was not decreased. We see nothing in the provisions of the Constitution and statutes to preclude the Legislature from enacting legislation, which if otherwise proper, separates Ogunquit Village Corporation from the Town of Wells.

You also ask whether Section 7 of LD 959 - An Act to Separate Ogunquit Village Corporation from the Town of Wells unconstitutionally denies the inhabitants of Wells the right to vote in a referendum to determine whether Ogunquit Village Corporation shall be separated from the Town of Wells. Section 7 of LD 959 permits legal voters of Ogunquit Village Corporation to vote to decide "Shall Ogunquit Village Corporation be separated from the Town of Wells as an incorporated Town of Ogunquit?"

There are no provisions in the Constitution of Maine which require the Legislature to seek consent or acceptance of the inhabitants of a municipality prior to dividing, incorporating or abolishing that municipality. In fact, the law in Maine has long been that the Legislature may incorporate a municipality without the consent of the inhabitants. Gorham v. Springfield, 21 Me. 58 (1842). In Hunter v. Pittsburgh, 207 U.S. 161 (1907), the United States Supreme Court summarized the case law on the authority of state legislatures over municipalities as follows:

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them...The number,

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nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State... The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it. 207 U.S. at 178 and 179

In view of the absolute power of the State over municipal corporations, the only apparent constitutional issues raised by Section 7 of LD 959 are the permissibility of the delegation if any, of legislative authority and whether voters of the Town

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of Wells are being denied equal protection of the laws.

In deciding whether the statute seeking voter approval in this case is an impermissible delegation of legislative authority, we note that statutes submitting the determination of changes in boundaries to the electorate are generally considered constitutional. McQuillin, supra chap. 7, Section 7.12, p. 320. In addition, Article IV, pt. 3, Section 19 of the Maine Constitution generally approves of referenda. It states in part that "[t]he Legislature may enact measures expressly conditioned upon the people's ratification by a referendum vote." While the referendum procedure mentioned in this article appears to refer to a statewide referendum, it provides some constitutional authority for the proposition that the Legislature may enact legislation upon the condition that it receive approval from those voters who are residents of a particular local governmental unit.

With regard to the equal protection issue, it is necessary to decide whether there is a reasonable basis for allowing only one group to vote. As we interpret LD 959, the Legislature will have decided that Ogunquit Village shall be separated from the Town of Wells and that Ogunquit Village Corporation shall become the Town of Ogunquit. Whether Ogunquit Village Corporation wants to assume the burdens of being a municipality is the only question remaining. The inhabitants of Ogunquit Village Corporation are the persons with the greatest interest in this issue. In People v. Kennedy, 101 N.E. 442 (N.Y. 1913), which decided the issue of whether it is an impermissible delegation of legislative authority to permit residents of a new county to vote on whether to separate from the original county, the court noted the distinction between the two groups of voters:

"and it was to the voters of this territory most affected that the right was left to determine whether the act should become operative.

I am aware that it is urged in this connection that the people of the entire county of New York were interested in the question whether a part of that

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county should be detached and erected into a new county, and that therefore, if any submission was to be made, it should have been made to the voters of the entire original county, and this suggestion may as well be disposed of here as at any point. In my opinion there are two answers to it. The people in the territory from which the new county was to be created would have a more direct interest and responsibility in the matter than any one else. On them especially would rest the privileges, responsibilities, and burdens of the new county if it were created, and it strikes the mind at once that they if any one should have the right to say whether the proposed territory should be separated from the old county and turned into a new one. But further than this, if it be assumed that the Legislature had the power to confer upon any body of people the right to vote on the question, it necessarily had the power and discretion within certain limits to decide upon what body of people it would confer this power, and its decision in this respect does not in my opinion make the law vulnerable." 101 N.E. at 445 and 446

Based on the preceding, we think that there is ample basis for concluding that Section 7 of LD 959 is constitutional.

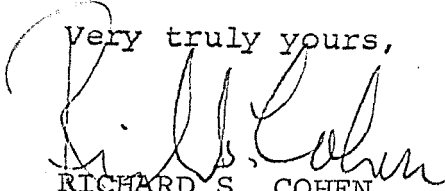
Finally, you ask whether the Ogunquit Village Corporation is a municipality within the meaning of M.R.S.A. Const. Art. VIII, pt. 2, § 1 and within the meaning of the Home Rule provisions of Title 30 M.R.S.A. § 1911 et seq. In Title 30 M.R.S.A. § 1901(6) municipality is defined to include "only cities and towns, but shall include plantations in chapter 239 subchapters V and VI". It seems apparent from this definition and from Section 5401 et seq., which bestows upon village corporations some of the powers and duties of municipalities, that the Legislature intended

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to exclude village corporations from the definition of municipalities. The powers and duties described in these sections of Title 30 dealing with village corporations do not include any home rule power under chapter 201-A of Title 30. By the terms of the statutory definition, Ogunquit Village Corporation is not a municipality with the meaning of the Home Rule provisions.

I hope this response to your letter is helpful. If you have further questions, please feel free to call on me.

Very truly yours,



RICHARD S. COHEN  
Attorney General

RSC/sn

cc: The Hon. J.P. Normand LaPlante  
cc: The Hon. Orland G. McPherson  
cc: The Hon. John L. Tuttle, Jr.



RICHARD S. COREN  
ATTORNEY GENERAL



CONSUMER & ANTITRUST DIVISION  
JOSEPH R. PATTERSON  
DEPUTY ATTORNEY GENERAL

APR 28 1979

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

DEPT. OF ATTORNEY GENERAL

February 20, 1979

Honorable Darryl N. Brown  
House of Representatives  
State House  
Augusta, Maine 04333

Re: Opinion Request Regarding the Legality of  
P. & S.L. 1978, Chapter 94 and Proposed  
Legislation to Repeal It.

Dear Representative Brown:

This is in response to your opinion request of February 2, 1979. In particular, you have raised three questions to which I shall respond in the order you have presented them.

Initially, you have inquired about the legality of Chapter 94 of the Private and Special Laws of 1978. Chapter 94, which is entitled, "An Act to Set Off a Portion of Land from the Town of Wales and Annex the Same to the Town of Sabbatus," provides as follows:

"All that part of the Town of Wales lying within the following described lines and boundaries; namely, beginning at a point in the established boundary line between the Town of Sabbatus and the Town of Wales, Androscoggin County, Maine, which point is in the southeasterly line of the Old Gardiner Road, so called; thence, in a general northeasterly direction along the southeasterly line of the Old Gardiner Road a distance of approximately 708 feet to a point; thence, in an easterly direction and parallel with the existing boundary line between the Town of Sabbatus and the Town of Wales a distance of 1,554.2 feet to a point; thence, at a right angle in a southerly direction a distance of 450 feet to the existing boundary line between the Town of Sabbatus and the Town of Wales is hereby set off from the Town of Wales and annexed to the Town of Sabbatus and shall form a part of the Town of Sabbatus."  
(effective July 6, 1978)

As you have pointed out, Chapter 94 was enacted without having been submitted to the voters of either the Town of Wales or Sabattus for approval. In view of the fact that Chapter 94 did not receive voter approval, you have asked whether it was legally enacted.

It is well-established in this State that the Legislature alone has the authority to alter the boundaries of towns. As early as 1854, the Supreme Judicial Court stated:

"The boundaries of towns are created by Acts of the Legislature. The inhabitants thereof cannot by direct corporate Acts change these boundaries. . . .

"The Legislature has authority to change the boundaries of towns at pleasure." Ham v. Sawyer, 38 Me. 37, 41 (1854).

Accord: Inhabitants of Fayette v. Inhabitants of Readfield, 132 Me. 328, 329, 170 A. 513 (1934); Shawmut Manufacturing Co. v. Town of Benton, 123 Me. 121, 123, 122 A. 49 (1923); Inhabitants of Eden v. Pineo, 108 Me. 73, 77 (1911).

The State of Maine is divided into "counties, districts, towns, plantations and unorganized territory," (1 M.R.S.A. § 7) and it lies within the sole power of the Legislature to determine in what manner the State will be divided.<sup>1/</sup> Accordingly, it was not necessary, as a precondition to its enactment, that Chapter 94 of the Private and Special Laws of 1978 receive voter approval from the inhabitants of the Towns of Wales or Sabattus.

Attached to your opinion request is a copy of proposed legislation which would repeal Chapter 94, P. & S.L. 1978. You have inquired whether it would be permissible to introduce the proposed legislation with "an amendment which would require a referendum vote by each of the two towns."

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<sup>1/</sup> 30 M.R.S.A. § 2002 (1978) does provide for a procedure whereby a boundary dispute between towns is submitted to a three-member commission appointed by the Superior Court. However, the sole function of this commission is to determine pre-existing boundary lines, not to establish new ones. See Inhabitants of Fayette v. Inhabitants of Readfield, supra.

While it is within the Legislature's power to create and change boundaries, there would appear to be no legal prohibition against legislative enactment of a particular boundary alteration subject to the approval of the voters in the affected geographical areas.<sup>2/</sup> This very procedure was employed by the Legislature when it enacted Chapter 87 of the Private and Special Laws of 1973, entitled, "An Act to Annex Town of Brunswick to Sagadahoc County." I have attached a copy of Chapter 87 for your information. As you will observe, this legislation was designed to remove the Town of Brunswick from Cumberland County and annex it to Sagadahoc County. However, Chapter 87 became effective 90 days after the Legislature's adjournment only for the purpose of submitting it to the voters of Brunswick for either acceptance or rejection. Chapter 87 also provided that if the voters of Brunswick approved the Act, it would then be submitted to the voters of Sagadahoc County who would be given an opportunity to either accept or reject it. Chapter 87 also provided that in the event that both the Town of Brunswick and the County of Sagadahoc approved the Act, it would then become finally effective.

In view of the foregoing, we would conclude that the proposed legislation may be introduced with a provision that if the measure is enacted by the Legislature, it will then be submitted to a referendum vote by both of the towns involved.

Finally, you have asked "[i]f the enclosed legislation with a referendum amendment fails, is there any time frame that is required before similar legislation can be submitted?". This question is governed by Article IV, Pt. 3, § 1 of the Maine Constitution and Rule 36 of the Joint Rules of the Maine Legislature. Article IV, Pt. 3, § 1 provides, in relevant part

" . . . that the business of the second regular session of the Legislature shall be limited to budgetary matters; legislation in the Governor's call; legislation of an emergency nature admitted by the Legislature; legislation referred to committees for study and report by the Legislature in the first regular session; and legislation presented to the Legislature by written petition of the electors under the provisions of Article IV, Part Thrid, Section 18."

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<sup>2/</sup> Article IV, Pt. 3, §19 of the Maine Constitution sanctions referenda in general. Section 19 provides, in relevant part, that "[t]he Legislature may enact measures expressly conditioned upon the people's ratification by a referendum vote." The referendum procedure mentioned in Article IV, Pt. 3, §19 appears to refer to a statewide referendum. Nevertheless, Article IV, Pt. 3, §19 provides some constitutional authority for the proposition that the Legislature may enact legislation upon the condition that it receive approval from those voters who are residents of a particular local government unit.

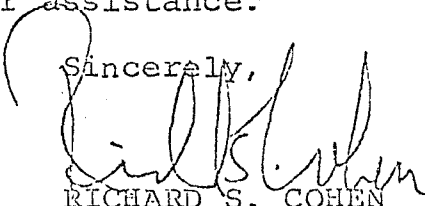
Accordingly, unless a piece of legislation falls within one of the categories specified in Article IV, Pt. 3, § 1, it cannot be introduced or considered by the Legislature during the second regular session. I would also direct your attention to Rule 36 of the Joint Rules, which provides

"No measure which has been introduced and finally rejected in any first regular session shall be introduced at any second regular or any special session of the same Legislature except by vote of two-thirds of both houses."

As we have indicated in the past, the question of whether and when particular legislation may be introduced are matters which are customarily resolved by the Legislature.

I hope this information is helpful. Please feel free to let me know if I may be of further assistance.

Sincerely,



RICHARD S. COHEN  
Attorney General

RSC/ec